

§ 5.105

§ 5.105 Course of action available.

During an investigation, the investigating officer may take appropriate action as follows:

- (a) Issue complaint.
- (b) Accept voluntary surrender of a license, certificate or document.
- (c) Accept voluntary deposit of a license, certificate or document.
- (d) Refer the case to others for further action. The investigating officer may refer the case to the Commandant or to an Officer in Charge, Marine Inspection, at any port for completion of administrative action if an adequate basis for action is found and the person under investigation and/or witnesses are not locally available.
- (e) Give a written warning. The investigating officer may give a warning to any person holding a license, certificate or document. Refusal to accept the written warning will normally result in a withdrawal of the warning and the preferral of charges. An unrejected warning will become a part of the person's record.
- (f) Close the case.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-1998-3472, 64 FR 28075, May 24, 1999]

§ 5.107 Service of complaints.

(a) When the investigating officer determines that an S&R proceeding is appropriate, he or she shall prepare and serve a complaint in accordance with 33 CFR part 20.

(b) When the investigating officer serves the complaint, he or she shall also advise the respondent—

- (1) Of the nature of S&R proceedings and their possible results;
- (2) Of the right to be represented at the hearing by another person, who may, but need not, be a lawyer;
- (3) Of the right to obtain witnesses, records, and other evidence by subpoena; and
- (4) That failure or refusal to answer the complaint or to appear at the time, date, and place specified for the hearing may result in a finding of default, which will constitute an admission of the facts alleged in the complaint and the waiver of his or her right to a hearing.

[USCG-1998-3472, 64 FR 28075, May 24, 1999]

46 CFR Ch. I (10-1-03 Edition)

Subpart E—Deposit or Surrender of License, Certificate or Document

§ 5.201 Voluntary deposits in event of mental or physical incompetence.

(a) A holder may deposit a license, certificate, or document with the Coast Guard in any case where there is evidence of mental or physical incompetence. A voluntary deposit is accepted on the basis of a written agreement, the original of which will be given to the holder, which specifies the conditions upon which the Coast Guard will return the license, certificate, or document to the holder.

(b) Where the mental or physical incompetence of a holder of a license, certificate, or document is caused by use of or addiction to dangerous drugs, a voluntary deposit will only be accepted contingent on the following circumstances:

- (1) The holder is enrolled in a bona fide drug abuse rehabilitation program;
- (2) The holder's incompetence did not cause or contribute to a marine casualty;

(3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, State or local government investigation; and

(4) The holder has not voluntarily deposited or surrendered a license, certificate, or document, or had a license, certificate, or document revoked for a drug related offense on a prior occasion.

(c) Where the mental or physical incompetence of a holder of a license, certificate, or document is caused by use or addiction to alcohol, a voluntary deposit will only be accepted contingent on the following circumstances:

- (1) The holder is enrolled in a bona fide alcohol abuse rehabilitation program;
- (2) The holder's incompetence did not cause or contribute to a marine casualty; and

(3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, State, or local government investigation.

(d) Where the conditions of paragraphs (b) and (c) of this section are not met, the holder may only surrender